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FEB 28 2011



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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA *ex rel.* THOMAS C.
HORNE, The Attorney General, and THE CIVIL
RIGHTS DIVISION OF THE ARIZONA
DEPARTMENT OF LAW,

Plaintiff,

vs.

CITY OF AVONDALE, a municipal corporation of
the State of Arizona,

Defendant.

No. CV2011-004392

COMPLAINT

Plaintiff, the State of Arizona, *ex rel.*, Thomas C. Horne, the Attorney General, and the Civil Rights Division of the Arizona Department of Law (collectively the "State"), alleges as follows:

INTRODUCTION

This is an action brought under the Arizona Fair Housing Act ("AFHA"), A.R.S. § 41-1491 *et seq.*, to correct disability discrimination in housing based on exclusionary zoning and regulatory practices and to provide appropriate relief to a provider of group housing for persons with developmental disabilities. For its cause of action, the State alleges the following:

JURISDICTION AND VENUE

1. The Civil Rights Division of the Arizona Department of Law is established by A.R.S. § 41-1401 to enforce the provisions of the Arizona Civil Rights Act, A.R.S. § 41-1401 *et seq.*

2. This Court has jurisdiction of this matter pursuant to A.R.S. § 41-1491.34(A).

3. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

PARTIES

4. The Civil Rights Division of the Arizona Department of Law is an administrative agency established by A.R.S. § 41-1401 to administer and enforce the provisions of the Arizona Civil Rights Act, including the Arizona Fair Housing Act.

5. The State brings this action, pursuant to A.R.S. § 41-1491.34, on its own behalf and on behalf of Christopher Hurst ("Hurst"), the President of Hurst Homes, Inc. ("Hurst Homes"), an aggrieved person under A.R.S. § 41-1491.

6. Hurst Homes is an Arizona corporation that owns and operates group homes for persons with developmental disabilities pursuant to contracts with the Arizona Department of Economic Security, Developmental Disabilities Division ("DDD").

7. Defendant City of Avondale ("Avondale" or "the City") is a municipal corporation of the State of Arizona.

8. The City of Avondale Development Services ("Development Services") is a Division of Defendant Avondale.

9. At all relevant times, the Planning and Zoning Department within Development Services was responsible for reviewing and approving applications for group homes for developmentally disabled persons.

GENERAL ALLEGATIONS

10. On or about 2006 and 2007, Hurst established three group homes for individuals with developmental disabilities ("the group homes") within the City of Avondale.

11. The group homes are North Star at 11764 W. Joblanca, Western Star at 12209 W. Tonto Street, and Morning Star at 621 S. 123rd Drive.

12. At all relevant times, the group homes complied with all licensing requirements of the Arizona Department of Health Services ("ADHS") and were licensed by ADHS.

1 13. At all relevant times, each of the group homes had one to two developmentally
2 disabled residents and was licensed for a maximum of three residents.

3 14. DDD is responsible for evaluating the Fire Risk Profile for all new group homes that it
4 licenses. As part of that evaluation, DDD assesses each group home resident. Its assessment of each
5 resident is based on a host of factors, including but not limited to: mobility, locomotion, response to
6 instruction, behavior under stress, fire awareness and sensory impairments. Based on its assessment,
7 DDD determined that the group homes had a Level I Fire Risk Profile. Under DDD policies and
8 procedures, group homes classified as Level I are required to have a fire alarm, fire extinguisher, an
9 evacuation plan, and fire drills.

10 15. A sprinkler fire suppression system is not required for group homes with a Level I Fire
11 Risk Profile in the State of Arizona. Hurst Homes informed Avondale that the group homes have a
12 Level I Fire Risk Profile and do not require sprinkler fire suppression systems under applicable State
13 licensing requirements.

14 16. In written notifications of code violations dated November 12, 2008, Avondale
15 informed Hurst that all group homes must be registered with the City.

16 17. On or about December 17, 2008, Hurst and Virginia Dashkovitz ("Dashkovitz"), then-
17 Executive Director of the Homes, attended a pre-application meeting with Development Services.
18 During the meeting, City Zoning Specialist Jennifer Fostino ("Fostino") and City Plans Examiner
19 Brett Harris ("Harris") informed Hurst and Dashkovitz that the City required all group homes to have
20 sprinkler fire suppression systems.

21 18. Fostino recalls that during the meeting Hurst and Dashkovitz: (1) protested the
22 installation of sprinkler fire suppression systems because of the expense, (2) cited the fact that the
23 State of Arizona did not require it for licensing purposes, and (3) insisted that their existing group
24 homes should not have to be retrofitted for sprinklers.

25 19. On or about March 17 or 18, 2009, James Maio ("Maio"), who had conducted the Fire
26 Risk Profile of the group homes for DDD, contacted the City on behalf of Hurst Homes. On March
27 25 or 26, 2009, Maio spoke with Fostino, e-mailed her a copy of A.R.S. § 36-582, and explained to
28 her that the State of Arizona does not require sprinkler systems for fire safety in Level I group homes.

1 20. Fostino informed Maio in a reply e-mail that she would forward the information to her
2 supervisor. On or about March 31, 2009, Fostino told Maio that the group homes still violated the
3 City's zoning ordinance. Thereafter, Maio spoke with Fostino's supervisor, who told him that she
4 would ask the City Attorney about the matter and get back with him. Maio never heard back from
5 Fostino's supervisor or from the City Attorney's Office. The City acknowledges that it did receive
6 calls and an e-mail from Maio on this issue.

7 21. Hurst received two letters dated August 13, 2009 from the City. One letter stated that
8 Morning Star violated the City's minimum spacing requirement of 1,320 feet and that the application
9 for its registration was not approved for that reason. This letter also advised Hurst that because of
10 this violation, Morning Star would need to cease operating as a group home by September 18, 2009.
11 Hurst was forced to move Morning Star out of Avondale.

12 22. The other letter informed Hurst that the two other group homes, North Star and
13 Western Star, were granted certificates of registration, but those certificates would expire on October
14 18, 2009 if Hurst did not obtain building and fire permits by that date.

15 23. On or about August 20, 2009, Hurst submitted building permit and fire plan review
16 applications to the City for North Star and Western Star. Hurst and Dashkovitz had a meeting with
17 Harris and the City Fire Chief, who both reiterated that the City required all group homes to have
18 sprinkler systems.

19 24. On or about September 4, 2009, Hurst filed a timely complaint of housing
20 discrimination with the State's Civil Rights Division ("the Division") pursuant to A.R.S. § 41-
21 1491.22(C), in which he alleged that the City discriminated against Hurst Homes on the basis of
22 disability by failing to accommodate his request to waive the sprinkler fire suppression systems
23 requirement and by subjecting the group homes to different terms and conditions than other single
24 family residences.

25 25. The Division's investigation found that the City uses several criteria in determining the
26 regulations for registration and compliance of group homes within Avondale's boundaries. Those
27 criteria are: Section 203 (previously Section 202) of the Municipal Code, Subsection E, which
28 addresses group homes; the 2003 International Fire Code ("IFC"); and the 2006 International
29 Building Code ("IBC").

1 26. Section 203(E)(3)(c) of the Municipal Code requires that group homes comply with all
2 applicable building and fire codes. The definition of a group home in Avondale's Code is "a
3 building, or part thereof, housing the maximum of 10 persons, excluding staff, on a 24 hour basis who
4 because of age, mental disability or other reasons live in a supervised residential environment, which
5 provides supervisory, personal or directed services."

6 27. The City claims that the imposition of more burdensome and costly safety measures on
7 group homes is due to safety concerns for the residents, neighbors, and firefighters. The City's Fire
8 Code requires all group homes to install a sprinkler fire suppression system to prevent and contain
9 fires.

10 28. The City maintains that it is concerned that disabled individuals will be unable to
11 extricate themselves from the residence in the event of a fire; therefore, the requirement is to ensure
12 the safety and security of the residents. The City further contends that the potential danger to
13 disabled individuals in group homes outweighs the cost to the owners and operators of such group
14 homes to install the sprinkler fire suppression systems. The City does not, however, conduct an
15 individualized assessment of each group home and its residents to determine whether such costly
16 safety measures are needed. DDD conducted such a review and determined that fire sprinklers were
17 not needed for the group homes because the residents were all ambulatory and capable of self-
18 preservation in the event of a fire.

19 29. Finally, the City asserts that although Hurst Homes is licensed by the State of Arizona,
20 the City has the authority to regulate activities where the State has not, by its regulation, occupied the
21 entire field, which the City claims the State has not done with respect to group homes.

22 30. Section 203 (previously Section 202) of the Municipal Code, Subsection E(5), which
23 addresses group homes, states in relevant part: "These regulations do not apply to homes for the
24 developmentally disabled as regulated by A.R.S. 36-582, as amended, to the extent that the State
25 preempts local zoning authority."

26 31. Arizona Revised Statutes § 36-582(D) provides that a local ordinance which deals with
health and safety, building standards, environmental impact standards, or any other matter within the
jurisdiction of a local public entity is not forbidden by State law provided that that the ordinance does
not distinguish residential facilities which serve six or fewer persons from other single family dwellings

1 and provided further that the ordinance does not distinguish residents of such residential facilities from
2 persons who reside in other single family dwellings. A.R.S. § 36-582(E) provides that a local
3 ordinance which distinguishes, tends to distinguish, or has the effect of distinguishing residential
4 facilities which serve six or fewer persons from single family dwellings is void and of no effect as
5 applied to such facilities.

6 32. The City's Municipal Code, on its face, treats group homes with six or fewer residents
7 differently from other single family residences because it requires all group homes to install more
8 costly safety measures, i.e. sprinkler fire suppression systems, and subjects them to excessive spacing
9 requirements. The City does not have such requirements for similarly situated single family homes.

10 33. The City's differential sprinkler system requirements for group homes are based on
11 generalizations and/or stereotypes which are unrelated to legitimate safety concerns and exceed the
12 City's authority pursuant to A.R.S. § 36-582(D). By imposing these unauthorized and excessive
13 requirements the City is discriminating against persons with disabilities who require group housing by
14 making such housing unavailable in Avondale.

15 34. Avondale's Municipal Code requirement does not benefit persons with disabilities
16 because it limits their opportunities to live in the housing of their choice. Upon information and belief,
17 the City is aware that the excessive sprinkler system requirement has deterred group home operators
18 from applying for registration in Avondale.

19 35. Although the Avondale Municipal Code imposes a greater fire safety requirement on all
20 group homes, the requirement is not narrowly tailored to address the individual needs of the disabled
21 persons affected by it.

22 36. The City contends that Hurst should have submitted a written request for
23 accommodation that states the reasons why the accommodation is needed and sets forth sufficient facts
24 for the City's zoning administrator to decide on the request.

25 37. The Division's investigation found that the rule regarding sprinkler fire suppression
26 systems is uniformly applied to all group homes which house fewer than 10 people. Hurst was not told
that this exception could ever be waived and he maintains that if he had been told, he would have
submitted the written request.

38. However, at the conclusion of the Division's investigation, the State determined that it is not reasonable to expect or require Hurst to submit to such a procedure because the application of a greater safety requirement under the Municipal Code to group homes that satisfy the definition of a single family home is a facially discriminatory Code requirement that also violates A.R.S. § 36-582.

39. The State also determined that Hurst provided sufficient notice to the City that he was requesting a waiver to the Code requirement based on DDD's individualized assessment of the disabilities and abilities of the group homes' residents and was denied an exemption. Moreover, Hurst and Maio did make a written request to the City that it not apply the sprinkler fire suppression system requirement to the group homes. This communication was Maio's e-mail to Fostino (and her supervisor); however, the City did not engage in an interactive process with Hurst to consider whether to waive the requirement.

40. Further steps to seek an “accommodation” from the City would likely have been futile because Hurst had previously provided documentation to the City showing that Western Star was a foster care home and the City did not require sprinkler fire suppression systems in foster care homes. However, because Western Star was a foster care home for developmentally disabled children, the City still treated it as a group home and denied Hurst’s request to waive the requirement.

41. On June 30, 2010, the Division issued a finding, pursuant to A.R.S. § 41-1491.29 of the AFHA, that there was reasonable cause to believe that discriminatory housing practices had occurred in violation of A.R.S. § 41-1491.19(B)(2) and A.R.S. § 41-1491.19(E)(2).

COUNT ONE

(Discrimination in Violation of A.R.S. § 41-1491.19(B)(2) of the AFHA)

42. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 41 of this Complaint.

43. It is a violation of A.R.S. 41-1491.19(B)(2) to discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling or in the provision of services or facilities

1 in connection with the dwelling because of a disability of a person residing in or intending to reside in
2 that dwelling after it is so sold, rented or made available.

3 44. Hurst Homes provides housing for persons with developmental disabilities in its group
4 homes.

5 45. Hurst's group homes in Avondale each have one to two developmentally disabled
6 residents and are licensed for a maximum of three residents.

7 46. Defendant's Municipal Code is facially discriminatory because it provides that all group
8 homes located in Avondale must install sprinkler fire suppression systems, regardless of the size of the
9 group home and the abilities of the residents.

10 47. Defendant denied Hurst's request to be exempt from the City's zoning ordinance which
11 requires all group homes to install a sprinkler fire suppression system to prevent and contain fires even
12 though State law prohibits a local ordinance that distinguishes residential facilities which serve six or
13 fewer persons from single family dwellings.

14 48. The Division found reasonable cause to believe that Defendant discriminated against the
15 aggrieved party by imposing more burdensome and costly safety measures on group homes than on
16 single family homes.

17 49. By imposing more burdensome and costly safety measures on group homes for people
18 with disabilities, Defendant discriminated against Hurst Homes by subjecting it to different terms,
19 conditions or privileges based on broad assumptions about the abilities of the residents of Hurst Homes
20 without conducting an individualized assessment of the safety threat, in violation of A.R.S. § 41-
21 1491.19(B)(2) of the AFHA.

22 50. Hurst Homes has been harmed as a result of Defendant's discriminatory conduct.
23 Therefore, Hurst Homes should be compensated pursuant to A.R.S. § 41-1491.34.

24 . . .

25 . . .

26 . . .

COUNT TWO

(Discrimination in Violation of A.R.S. § 41-1491.19(E)(2) of the AFHA)

51. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 50 of this Complaint.

52. It is a violation of A.R.S. § 41-1491(E)(2) to refuse to make reasonable accommodations in rules, policies, practices or services if the accommodations may be necessary to afford a person with disabilities an equal opportunity to use and enjoy a dwelling.

53. Defendant maintains that Hurst should have submitted a written request for accommodation that stated the reasons why the accommodation was needed and set forth sufficient facts for the City's zoning administrator to decide on the request. Hurst, with the assistance of DDD, informed the City both during meetings and in an email that Arizona did not require sprinkler fire suppression systems for fire safety in Level I group homes.

54. Regardless of several attempts to convince the City that Hurst Homes should be exempt from the City's Municipal Code requirement, Defendant continued to insist that all group homes must have sprinkler fire suppression systems.

55. By its actions, Defendant effectively denied Hurst's request for accommodation to provide equal housing opportunity for developmentally disabled persons in group homes which serve six or fewer persons.

56. By refusing to grant a reasonable accommodation to Hurst Homes, Defendant discriminated against Hurst Homes based on the disabilities of persons residing at or intending to reside in Hurst's group homes, in violation of A.R.S. § 41-1491.19(E)(2) of the AFHA.

57. Hurst Homes has been harmed as a result of Defendant's discriminatory conduct. Therefore, Hurst Homes is entitled to and should be compensated pursuant to A.R.S. § 41-1491.34.

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COUNT THREE

(Discrimination in Violation of A.R.S. § 41-1491.19(A)(2) of the AFHA)

58. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 57 of this Complaint.

59. It is a violation of A.R.S. § 41-1491.19(A)(2) to discriminate in the sale or rental or otherwise make unavailable or deny a dwelling to any buyer or renter because of a disability of a person residing in or intending to reside in that dwelling after it is sold, rented or made available.

60. Defendant's differential requirements for group homes are unrelated to legitimate safety concerns and exceed its authority pursuant to A.R.S. § 36-582(D).

61. Defendant is aware that the differential requirements are perceived by group home applicants as a barrier to operating a group home in Avondale.

62. As a result of Defendant's discriminatory practices, adequate group housing for individuals with developmental disabilities is not available in Avondale.

63. By continuing to impose an excessive fire safety and spacing requirements on all group homes, Defendant has made housing for individuals with developmental disabilities unavailable in violation of A.R.S. § 41-1491.19(A)(2) of the AFHA.

64. Hurst Homes has been harmed as a result of Defendant's discriminatory conduct. Therefore, Hurst Homes is entitled to and should be compensated pursuant to A.R.S. § 41-1491.34.

PRAYER FOR RELIEF

WHEREFORE, the State requests that this Court:

A. Enter judgment on behalf of the State, finding that Defendant violated the Arizona Fair Housing Act by subjecting Hurst's group homes to different terms and conditions than other single family residences, by failing to accommodate his request to waive the sprinkler fire suppression systems requirement, and by making housing unavailable for persons with developmental disabilities.

1 B. Grant a permanent injunction prohibiting Defendant, its employees and agents and all
2 persons in active concert or participation with Defendant from engaging in any housing practice that
3 discriminates on the basis of disability or interferes with the exercise of rights granted by the AFHA.

4 C. Declare null and void those portions of Defendant's Municipal Code that treat group
5 homes with six or fewer residents differently than other single family residences by requiring all group
6 homes to install more costly safety measures such as sprinkler fire suppression systems.

7 D. Order Defendant to institute and carry out fair housing policies and zoning enforcement
8 procedures to provide equal housing opportunities for persons with disabilities, including providing
9 reasonable accommodations for persons with disabilities, as required by the AFHA.

10 E. Order Defendant to make Hurst Homes whole and award it actual and punitive damages
11 in amounts to be determined at trial, including prejudgment interest, pursuant to A.R.S. § 41-
12 1491.34(C).

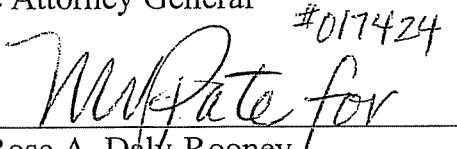
13 F. Issue an order authorizing the State to monitor Defendant's compliance with the AFHA
14 and this Court's judgment.

15 G. Award payment to the State for its costs incurred in bringing this action, and its costs in
16 monitoring Defendant's future compliance with the AFHA.

17 H. Grant such other and further relief as this Court may deem just and proper in the public
18 interest.

19 DATED this 28th day of February, 2011.

20 THOMAS C. HORNE
21 The Attorney General

22 By  #017424
23 Rose A. Daly-Rooney
24 Assistant Attorney General
25 Civil Rights Division
26 Attorneys for Plaintiff